

APPEAL NO. 021935
FILED SEPTEMBER 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 15, 2002. The hearing officer determined that the appellant's (claimant) compensable (back) injury does not extend to and include an injury to the neck.

The claimant appeals on three grounds: (1) that the hearing officer erred in finding that the compensable injury did not include the neck; (2) that the hearing officer erred in a comment in the Statement of the Evidence; and (3) that the hearing officer should have excluded the transcribed statement that the claimant gave to the insurance adjuster because the claimant was represented at the time. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on _____, when he was installing cable in an electronic scoreboard, the cable broke and the claimant fell backward. The claimant had sustained a prior cervical injury in a nonwork-related _____ motor vehicle accident when he was rear ended by a truck. In evidence is a cervical MRI report dated _____ (three months before the compensable injury), a cervical MRI report dated _____ (some weeks after the compensable injury), and a reread of the August 2001 MRI. The hearing officer commented that the comparisons of MRI reports "reveal no appreciable differences and the results of such testing are, essentially, the same."

The claimant was interviewed by the carrier's adjuster on July 16, 2001, and a transcribed copy of that interview was admitted into evidence at the CCH without objection. Nothing in the recorded statement indicates that the claimant was represented and the claimant stated that he was aware the interview was being recorded and gave his permission to do so.

Regarding the claimant's appeal that the transcribed statement should have been excluded, we note that it was admitted without objection and apparently had been timely exchanged. The fact that the claimant may have been represented by an attorney is not evident from the statement and apparently was first raised in redirect examination and closing argument at the CCH. We further note that the CCH was a civil administrative hearing rather than a criminal proceeding, and in any event the claimant did not object to its admission on any ground. The claimant's appeal on this ground is without merit.

The question of extent of injury and whether or not the claimant sustained a new injury in the form of an aggravation are questions of fact for the hearing officer to resolve. The hearing officer's decision is supported by sufficient evidence.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We hold that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **SOUTHERN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ACTIVE PRESIDENT, VICE PRESIDENT, OR SECRETARY
2727 TURTLE CREEK BOULEVARD
DALLAS, TEXAS 75266-0560.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge